

**Best Roofing Co., Inc. and Belton Roofing and Construction, Inc. alter egos, John Krum, an Individual and Susan Krum, an Individual, First Class Roofing and Remodeling, a successor and United Union of Roofers, Waterproofers and Allied Workers, Local No. 20, AFL-CIO.** Cases 17-CA-14094 and 17-CA-14322

August 27, 1991

# SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On June 11, 1990, the National Labor Relations Board ordered<sup>1</sup> Respondents Best Roofing Co., Inc. (Best) and its alter ego, Belton Roofing and Construction, Inc. (Belton) to, inter alia, make whole the contractual trust funds and to make whole certain employees and to reimburse them for certain expenses. On December 10, 1990, the United States Court of Appeals for the Eighth Circuit enforced the Board's Order in full.<sup>2</sup> On March 15, 1991, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging that a controversy had arisen over the amount of backpay due under the terms of the Board's Order, as well as over whether John Krum and Susan Krum should be held individually liable and whether Respondent First Class Roofing and Remodeling (First Class) should be held liable as a successor to Respondents Best and Belton,<sup>3</sup> and notifying the Respondents that they must file an answer complying with the Board's Rules and Regulations within 21 days of service of the backpay specification. By letter dated April 26, 1991, counsel for the General Counsel advised the Respondents that unless an answer was received by May 17, 1991, a Motion for Summary Judgment would be filed.

The Respondents Best, Belton, John Krum, and Susan Krum filed an answer received by May 17, 1991, admitting certain allegations in the compliance specification, denying others, and claiming insufficient information to form a belief regarding the truth or falsity of the remaining allegations.

The Respondent First Class also filed an answer on May 23, 1991, denying certain allegations, claiming insufficient knowledge to form a belief regarding the truth or falsity of the remaining allegations in the compliance specification, and raising certain affirmative defenses.

On May 23, 1991, the General Counsel filed with the Board a Motion for Summary Judgment against Respondent First Class and for Partial Summary Judgment against Respondents Best, Belton, John Krum,

and Susan Krum. On May 28, 1991, the General Counsel filed with the Board an Amended Motion for Partial Summary Judgment against Respondents First Class, Best, Belton, John Krum, and Susan Krum with exhibits attached. In his amended motion, the General Counsel alleges that the Respondents' answers to the allegations in the compliance specification regarding backpay computation do not meet the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations. On May 31, 1991, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted.

The Respondents Best, Belton, John Krum, and Susan Krum filed a response to the Amended Motion for Partial Summary Judgment alleging that the issue of John and Susan Krum's personal liability had not been fully litigated and that the request for partial summary judgment against them was therefore premature. Respondent First Class filed interrogatories and a request for production of documents.<sup>4</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

## Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in

<sup>1</sup> 298 NLRB 754.

<sup>2</sup> No. 90-2666 (unpublished).

<sup>3</sup> See *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

<sup>4</sup> On June 7, 1991, the Regional Director for Region 17 issued an order referring request for production of documents and interrogatories to the Board. On June 10, 1991, counsel for the General Counsel filed with the Board a motion to disallow discovery and to deny request for production of documents and interrogatories. We grant counsel for the General Counsel's motion to disallow discovery. Accordingly, we deny Respondent First Class' requests for interrogatories and production of documents. See, e.g., *Rainbow Coaches*, 280 NLRB 166, 168-169 (1986).

detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In his amended motion, the General Counsel contends that with respect to the total amount due, as set forth in paragraphs 7 through 22 of the compliance specification, the Respondents' general denials do not fairly meet the substance of the allegations as required by Section 102.56 because they do not specifically state the basis for their disagreement with the backpay computations therein or set forth in detail their position as to the applicable premises together with supporting figures. Accordingly, the General Counsel requests that the allegations of backpay computation contained in paragraphs 7 through 22 of the compliance specification be deemed to be true.

We agree. The matters denied concern the various factors entering into the computation of gross backpay. As to these matters, the rules require more than a general denial. The Respondents must specifically state the basis for disagreement, setting forth in detail their position as to the applicable premises and furnishing the appropriate supporting figures. The compliance specification served on Respondents First Class, Best, Belton, John Krum, and Susan Krum specified that "pursuant to Section 102.56 of the Board's Rules and Regulations, Series 8, as amended, the Respondents . . . shall each file . . . an answer" to the compliance specification and that upon failure to do so "all of the allegations in the Compliance Specification shall be deemed to be admitted to be true and shall be so found by the Board." Respondents Best, Belton, John Krum, and Susan Krum have clearly failed to file an adequate answer under Section 102.56(b) and (c) of the Board's

Rules and Regulations, and we therefore grant the General Counsel's motion and deem all of the allegations contained in paragraphs 7 through 22 of the compliance specification to be admitted to be true as against Respondents Best, Belton, John Krum, and Susan Krum. However, that portion of the Respondents' answer which denies John and Susan Krum's alter ego/single employer status with Best and Belton is adequate. Consequently, we shall order a hearing on this issue.

The portion of the First Class answer which contests the computation of backpay is inadequate for the same reasons as the answers of Best, Belton, John Krum, and Susan Krum were inadequate. However, that portion of the First Class answer which denies that it is a successor to Best, Belton, John Krum, and Susan Krum is adequate. Consequently, we shall order a hearing on this issue.<sup>5</sup>

In sum, as the General Counsel does not seek summary judgment with respect to the alter ego/single employer status of Respondents John and Susan Krum or with respect to the successorship status of First Class, we shall order a hearing on those issues.

#### ORDER

It is ordered that the General Counsel's Amended Motion for Partial Summary Judgment is granted as to the allegations contained in paragraphs 7 through 22 of the compliance specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 17 for the purpose of arranging a hearing before an administrative law judge on the remaining allegations contained in the compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

<sup>5</sup> On August 15, 1991, Respondent First Class filed with the Board four motions in which First Class argues, in effect, that it has been denied due process because, inter alia, it has not been afforded the opportunity to litigate the issue of whether it is a successor employer to Respondents Best, Belton, John Krum, and Susan Krum. Respondent First Class also contends that it was additionally prejudiced because it did not receive a copy of the Board's May 31, 1991 order transferring the proceeding to the Board and Notice to Show Cause. In denying Respondent First Class' various motions, we shall, however, treat them as a timely filed response to the Notice to Show Cause. In this regard, we note that despite the fact that it was properly served with a copy of the compliance specification and notice of hearing, Respondent First Class has not filed an adequate answer to par. 7 through 22 of the backpay specification itself. We also emphasize that since we are remanding the case to the Regional Director for hearing, inter alia, on the issue of First Class' liability as a successor to Respondents Best, Belton, John Krum, and Susan Krum, Respondent First Class has not been prejudiced as alleged in its motions.